IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.39 OF 2001
IN
WRIT PETITION NO.1395 OF 2000

Jokim Vincent Gomes,
(Since deceased) through his heirs and
legal representatives:
1(a) Veronica Jokim Gomes,
age 57 years.
1(b) Jude Jokim Gomes, age 34 years.
1(c) Domnic Jokim Gomes,
age 24 years,
Heirs and legal representatives
of the deceased appellant Jokim Gomes,
All Indian Inhabitants, residing at
Jokim Gomes House, Upper Pakhadi,
Kanjur Village, Bombay-400 042. ...Appellants.

Vs.

-1. The State of Maharashtra,
Mantralaya, Mumbai.
-2. The President,
Slum Tribunal, Bandra, Mumbai.
-3. The Deputy Collector and
Competent Authority, Topiwala
College Building, Mulund (West),
Bombay-400 080.
-4. A.A. Mukundan,
adult, age not known.
-5. Dhilomena Estibera,
adult age not known.
-6. Mithalal Trivedi,
adult age not known.
-7. Shashikant T. Nikam,
adult age not known.
-8. Hubert C. D'Souza,
adult age not known.
-9. Chaya Patil,

adult age not known.
-10. S.J. Gupta,
adult age not known.
-11. Margaret P. D'Souza,
adult age not known.
-12. Josef D'Souza,
Since deceased through his
legal heirs:
-12(a) Mrs. Sophia Joseph D'Souza.
-12(b) Mr.Loyal Joseph D'Souza.
-12(c) Miss Lolett Joseph D'Souza,
heirs and legal representatives
of the deceased Respondent No.11,
all adult, Indian Inhabitant,
residing at Gomes Chawl, Kanjur
Village, Kanjur (East),
Bombay-400 042.
-13. Dinkar Bohrade,
adult age not known.
-14. Y. Paniamma Felix,
adult age not known.
-15. Asha Ramesh Borhade,
adult age not known.
-16. Pushpalata V. Jadhav,
adult age not known.
-17. D.N. Yadav,
adult age not known.
-18. Julian Alphonse,
adult age not known.
-19. Ramdas Baban Gadge,
adult age not known.
All residing at Gomes Colony
Chawl, Kanjur Village,
Kanjur (East), Bombay-400 042.
-20. Inani Banwarilal Ramnivas.
-21. Gala Vallabhji Hirji.
-22. Lendi Manisha Mangesh.
-23. Pandit Galsism Ajit.
-24. Bhoir Sarla Vinayakrao.
-25. Borade Bhalchandra Mahadeo.
-26. Lokhande Adarsh Vithal.

-27. Kakade Baban Khandu.
-28. Bhagal Giridhar Pundalik.
-29. Prasad Tilak Devaraj.
-30. Bangera Bhoga Baniappa.
-31. More Gulabrao Babaji.
-32. Pawar Ashok Gulabrao.
-33. Mate Yashwant Raghu.
-34. Fernandes Alex.
-35. Shinde Krishnakaumar Dattaram.
-36. Bhagat Anant Pundalik.
All resident of Room Nos.1 to 17,
'A' Chawl, Shah Colony,
Kanjur Village Road,
Mumbai-400 042.
-37. Shri Remedios Salvador Archi.
-38. Remedios Oswald Samuel.
-39. Jain Sou. Kamni Ben Ambalal.
-40. Borade Bhagoji Shankar.
-41. D'souza Rozi Gilbert.
-42. Valunj Vasant Malhari.
-43. Dalvi Uday Narayan.
-44. Kadam Anil Rajaram.
-45. Waghmare Janardan Govind.
-46. Temgire Vasant Bhikaji.
-47. Khede Nabaji Limbaji.
-48. Dere Savkar Dhondiba.
-49. Patil Vilas Jagannath.
-50. Sou. Manisha Shantaram Kasar.
-51. Fernandes Sylvester John.
-52. Bendke Sanjay Rabaji.
-53. Belekar Parshuram Sonu.
-54. Date Baban Rangnath.
-55. Kumarkar Shivaji Rambhau.
-56. Kadam Vinodini Vilas.
All residents of room nos.1 to 20,
'B' Chawl Shah Colony, Kanjur
Village Road, Mumbai-400 042.
-57. Kapse Hanumant Mahadeo.
-58. Apkar Sou. Lata Manohar.
-59. Kenjale Shivaji Shankar.
-60. Agarwal Gopal Jagdish.

-61. More Ramesh Shankarrao.
-62. D'cruz Zekhas Anthony.
-63. Parab Shashikant Appa.
-64. Gunjal Bhimaji Bajakha.
-65. Londhe Dinkar Shankar.
-66. Gunjal Balkrishna Ganpat.
-67. More Rajaram Kondiba.
-68. Sony Nivaraj Rao.
-69. Kale Prabhakar Maruti.
-70. Nirmun Anandibai Appa.
-71. Bekare Virendra Dattatraya.
-72. Mate Shantaram Devram.
-73. Parab Sou. Anjali Shashikant.
-74. Hannrai Arun Dattaram.
-75. Shinde Sandip Vasant.
-76. D'cruz Francis Anthony.
-77. Sony Tijobin Hiralal.
All residents of Room Nos.1 to 21,
'C' Chawl, Shah Colony,
Kanjur Village Road, Mumbai-400 042.
-78. Meherani Rameshchandra R.
-79. Armedia Sevester Zavier.
-80. Navkar Mahadeo Nathuram.
-81. Godhini Manual Rozario.
-82. Sharma Pratap Hiralal.
-83. Dhivar Dinkar Dada.
-84. More Sou.Shalini Ramesh.
All residents of room Nos.1 to 7,
'D' Chawl Shah Colony,
Kanjur Village Road,
Mumbai-400 042. And all respondents
Nos.20 to 84 are the members of the Shah
Colony residents chawl committee having
its office at shah Colony, Kanjur
Village, Mumbai-400 042. ...Respondents.

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Smt.V. V. Thorat with Shri Divesh Chamboowala for the appellants.
Shri Pradeep Jadhav, AGP for Respondent Nos.1 and 2.
Shri Y. V. Divekar i/b. M/s. Divekar & Co. for respondent Nos.3 to 18.

Shri P.P. Chavan i/b. Vinay Bhate for Respondent Nos.20 to 84.

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CORAM : R. M. S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ.

February 22, 2007.

JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

The Appellant has impugned an order of the Learned Single Judge, dated 10th October 2000, by which a declaration of a slum area, issued in exercise of the powers conferred by the provisions of Section 4(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, has been upheld. This appeal has been placed for hearing together with companion Appeal 959 of 1998.

2. The submission that has been urged on behalf of the Appellant is that the declaration of a slum was in colourable exercise of power. The Appellant had instituted a suit for eviction and sought possession before the City Civil Court, which was decreed. The submission is that it was, after all the litigation had come to an end, that the official machinery was activated in order to seek the issuance of a declaration of the property as a slum

area.

3. During the course of the hearing, it has not been disputed before the Court that the requisite procedure that is required to precede the declaration of an area as a slum area has been duly followed. No submission as to procedural irregularity has been urged. The material on the record would show that prior to the declaration which was issued on 6th March 1997, the site was surveyed and inspected by the Surveyor in the presence of the local residents as well as the Appellant who is the landlord. The report of the site Surveyor showed that there were five chawls situated on the land. Out of 18 Wcs, only 9 were in use while doors and water closets of the rest were found to be in broken condition. There were open gutters on the land. Even those had been built by the hutment dwellers at their own costs. Refuse water was spilling over from the gutter and had spread on to the internal roads. There was a stench in the area and the condition was noted to be harmful to the health of the residents. During the monsoon, there was an accumulation of rain water. There was no approach road to the colony. The internal roads had no arrangement of lighting. The tenements in the area were lacking in

natural light and air. Colonies situated in the vicinity of the area had already been declared as slum areas. It was, in these circumstances, found by the Deputy Collector (Encroachment) and Competent Authority that the conditions required to issue a declaration of a slum area under Section 4(1) were fulfilled.

4. The Tribunal, in the course of its order dated 17th December 1999, has noted that 365 persons are residing in chawls and that out of the 18 WCs, 9 were in broken condition. The Tribunal has taken note of the position of the gutters and the internal roads, the absence of drainage facility and street lights and the absence of ventilation to the tenements. The Learned Single Judge on the basis of these findings, has declined to interfere, in the exercise of his jurisdiction under Article 226 of the Constitution.

5. Under Section 4(1), the Competent Authority is empowered to issue a declaration that an area is a slum area inter alia where it is satisfied that any area is or may be a source of danger to the health, safety or convenience of the public of that area or of its neighborhood, by reason of the area having inadequate or no basic amenities, or being insanitary, squalid,

overcrowded or otherwise. In the present case, this Court would not be justified in sitting in appeal over the assessment of facts by the Competent Authority. Even if, as the Appellant submits, some of the residents were motivated to move the Government in pursuance of decrees that were passed against them by the Civil Courts, it cannot be said that the exercise of the power by the Competent Authority to issue a declaration is invalid. In any case the vast majority of other slum dwellers cannot be deprived of the protective arm of the Slum Areas Act. The Report of the Court Commissioner has been submitted during the pendency of this appeal. The Report will not be of relevance to deducing the condition of the area when the land was declared as a slum. The relevant date when the pre conditions spelt out by Section 4(1) must exist is the date of the declaration. So long as the authority has applied its mind to the considerations which are required to be borne in mind by the statute, the Court in exercise of its jurisdiction under Article 226 of the Constitution would not be justified in interfering with it. From the material on record, it does not appear that the order of the Competent Authority has been guided by irrelevant or extraneous considerations. The factors that have weighed with the Competent Authority are germane to the

exercise of the power under Section 4(1) of the Act. In the circumstances, no case for interference is made out. The Petition is dismissed.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)